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17 IN RE: FACEBOOK, INC. CONSUMER
18 PRIVACY USER PROFILE LITIGATION,

19 This document relates to:

20 ALL ACTIONS

21 CASE NO. 3:18-MD-02843-VC

22 **FACEBOOK, INC.’S STATEMENT IN
23 SUPPORT OF PLAINTIFFS’
24 ADMINISTRATIVE MOTION TO
25 CONSIDER WHETHER ANOTHER
26 PARTY’S MATERIALS SHOULD BE
27 SEALED**

Pursuant to Civil Local Rules 7-11 and 79-5, Facebook, Inc. (“Facebook”) hereby submits this Statement in Support of Plaintiffs’ Administrative Motions to Consider Whether Another Party’s Materials Should Be Sealed (Dkts. 1001, 1005) (“Administrative Motions”). For the reasons explained below, there is good cause to seal permanently this information and Facebook’s request is narrowly tailored under the circumstances.

I. Background

On August 23, 2022, this Court ordered Plaintiffs to file “full transcripts of the 30(b)(6) depositions cited in their sanctions motion and supplemental briefing.” On August 24, Plaintiffs filed these transcripts in two separate Administrative Motions. Dkts. 1001, 1005. Facebook hereby submits its statement and declaration in support of sealing these materials.

II. The Good Cause Standard Applies Because the Motion Is Unrelated to the Merits

Courts seal information in non-dispositive motions so long as there is good cause to do so because public disclosure of the information would cause harm or prejudice, and the request is narrowly tailored. *Doe v. Walmart, Inc.*, 2019 WL 636362, at *1–2 (N.D. Cal. Feb. 11, 2019). Here, the Brief, declarations, and exhibits are related to the discovery record, not the merits of this action, so the good cause standard applies.

III. There Is Good Cause for Facebook’s Proposed Redactions and Sealing

Facebook asks the Court to permanently seal the following categories of information:

(i) Confidential information that Facebook has previously asked the Court to seal.

Facebook asks the Court to seal limited portions of the following documents, for which Facebook previously requested that the Court find good cause to seal, upon which the Court has not yet ruled:

- 22 1. Ex. 5 (Dkt. 1006-8). *See* Dkt. 938-3-4 (proposed redactions); Dkt. 938 (Facebook’s
23 explanation for the proposed redactions);
- 24 2. Exs. 95, 98, 103, 105, and 106 (Dkts. 1006-2 – 1006-6); *See* Dkt. 1012-1, 1012-2 (proposed
25 redactions); Dkt. 1012 (Facebook’s explanation for the proposed redactions)

(ii) Confidential information regarding Facebook’s proprietary data systems and data storage and processing practices. As set forth in the Stein Declaration and Proposed Order, Facebook asks the Court to seal confidential information regarding details about the data systems

1 that house specific data and how Facebook stores, tracks, preserves, deletes, and processes data.
 2 This information involves key components of Facebook's business that set it apart and ahead of
 3 its competitors and reveals confidential technical information about its data systems and
 4 proprietary methods for storing and processing data. Stein Decl. ¶ 4. If this information were
 5 publicly disclosed, competitors could use it to improve their own methods for managing high
 6 volumes of user data or for tracking user data across data systems. *Id.* Courts routinely seal
 7 commercially sensitive information that "competitors would be able to take advantage of" and use
 8 unfairly if disclosed. *See, e.g., Asetek Danmark A/S v. CMI USA, Inc.*, 2015 WL 4511036, at *2
 9 (N.D. Cal. July 23, 2015). Additionally, hackers and other bad actors could use this information
 10 to better understand Facebook's data systems and target specific repositories of data, potentially
 11 harming both Facebook and its users. Stein Decl. ¶ 4. The Court has previously found good cause
 12 to seal this type of information. *See, e.g.,* Dkt. 813 at 0026–29 (requesting sealing data system
 13 names); Dkt. 844 (granting motion to seal).

14 ***(iii) Confidential information regarding Facebook's tool for responding to law-***
enforcement requests for user records. As set forth in the Stein Declaration and Proposed Order,
 15 Facebook asks the Court to seal confidential information regarding Facebook's tool for responding
 16 to law-enforcement requests for user records, including the name of the tool, the types of data it
 17 contains, the delta between the data within the tool and DYI, and the format in which data from
 18 the tool is produced. Public disclosure of details about this tool would reveal confidential
 19 information regarding Facebook's internal operations that could be used by bad actors to attempt
 20 to circumvent and evade Facebook's enforcement strategies and current and future lawful
 21 governmental criminal investigations. Stein Decl. ¶ 5. It also could provide confidential
 22 information to competitors about how Facebook tracks and stores data across its systems, to
 23 Facebook's competitive disadvantage. *Id.*

24 ***(iv) Confidential and competitively sensitive information regarding Facebook's business***
programs, strategies, decisions, and partners. Facebook asks the Court to seal confidential
 25 information, set forth in the Stein Declaration and Proposed Order, regarding Facebook's business
 26 programs, strategies, decisions, and partners, including confidential technical details of how
 27

1 Facebook develops and uses data to target advertisements to the most relevant users. Courts
 2 routinely seal documents which would reveal “confidential and competitively-sensitive
 3 information” and “confidential business strategies,” as well as other “proprietary” information,
 4 that competitors could use to a party’s competitive disadvantage. *See, e.g., In re Lidoderm*
 5 *Antitrust Litig.*, 2016 WL 4191612, at * 26–27 (N.D. Cal. Aug. 9, 2016); *In re Qualcomm Litig.*,
 6 2017 WL 5176922, at *2 (S.D. Cal. Nov. 8, 2017). Courts also regularly seal information that
 7 would identify confidential business relationships or reveal the terms of such relationships. *See,*
 8 *e.g., Obesity Rsch. Inst., LLC v. Fiber Rsch. Int’l, LLC*, 2018 WL 3642177, at *5 (S.D. Cal. Aug.
 9 1, 2019). For these reasons, this Court has previously sealed similar information. *See, e.g.,* Dkt.
 10 813-1 at 3440 (requesting sealing of the name of a business partner); Dkt. 844 (granting motion to
 11 seal); Dkt. 550 at 2–3; Dkt. 550-1 at 1 (requesting sealing of information that would give
 12 competitors insight into Facebook’s strategy); Dkt. 638 (granting motion to seal); Dkt. 812 at 3–4
 13 (explaining harm to Facebook from public disclosure of the details of Facebook’s targeted
 14 advertising); Dkt. 844 (granting motion to seal such information). Public disclosure of this
 15 information could allow Facebook’s competitors to copy its strategies, or use the ideas developed
 16 by Facebook at its own expense to Facebook’s competitive disadvantage. Stein Decl. ¶ 6. Public
 17 disclosure also could harm Facebook’s relationships with its business partners by disclosing their
 18 identities and confidential negotiations with Facebook. *Id.* It also could undercut Facebook’s
 19 ability to negotiate with these entities’ competitors. *Id.* Finally, Facebook’s ability to serve
 20 advertisements to the users who find them most relevant is an essential aspect of its business, and
 21 if publicly disclosed, this information could allow Facebook’s competitors to improve their service
 22 of advertisements and cause Facebook competitive harm. *Id.*

23 **(v) Confidential information regarding Facebook employees.** As set forth in the Stein
 24 Declaration and Proposed Order, Facebook asks the Court to seal certain confidential information
 25 regarding Facebook employees, including the names of certain employees, employee email
 26 addresses, and employee performance evaluations. To protect employees’ privacy interests, courts
 27 regularly seal information about employees who are not parties to the litigation. *See, e.g., Shopify*
 28 *Inc. v. Express Mobile, Inc.*, No. 20-mc-80091, 2020 WL 4732334, at *12 (N.D. Cal. Aug. 14,

1 2020) (concluding that “good cause exist[ed] to seal” the “names of parties who are not involved
 2 with or incident to the current litigation where disclosure of the information would violate a party’s
 3 legitimate privacy interest”); *Murphy v. Kavo America Corp.*, No. CV-11-0410-YGR, 2012 WL
 4 1497489, at *1 (N.D. Cal. April 27, 2012) (recognizing that “[e]mployees and former employees
 5 who are not parties to . . . litigation have privacy interests in their personnel information”). Sealing
 6 is especially needed for certain documents containing the identities of a large number of employees
 7 because publicly revealing the names of these Facebook employees may encourage competitors to
 8 recruit these critical employees. *See In re Incretin-Based Therapies Products Liabilities Litig.*,
 9 No. 13-md-2452-AJB, 2015 WL 11658712, at *2 (S.D. Cal. Nov. 18, 2015) (“[C]ourts have
 10 maintained documents under seal where the information contained therein could permit
 11 competitors to gain access to operational and personnel information.”); *see also* Stein Decl. ¶ 7.
 12 The Court has previously sealed similar information for the same reasons. *See, e.g.*, Dkt. 636
 13 (requesting sealing of employee names); Dkt. 641 (granting motion to seal).

14 **(vi) Confidential information regarding Facebook’s privacy and platform policy**
enforcement practices. Facebook asks the Court to seal confidential information, set forth in the
 15 Stein Declaration and Proposed Order, regarding Facebook’s privacy and platform enforcement
 16 practices. Disclosure of information about Facebook’s decision-making process for evaluating
 17 apps and developers that may be violating its policies would reveal confidential details of
 18 Facebook’s internal business operations. Stein Decl. ¶ 8. If this information were revealed, bad
 19 actors could use it to attempt to circumvent and evade Facebook’s enforcement strategies,
 20 potentially harming both Facebook and its users. *Id.* The Court has previously sealed similar
 21 information for the same reasons. *See, e.g.*, Dkt. 812 (requesting sealing of similar information);
 22 Dkt. 844 (granting motion to seal).

24 **IV. The Proposed Redactions Are Narrowly Tailored**

25 Facebook’s proposed redactions are narrowly tailored because the redactions are limited to
 26 the narrow and limited categories of confidential and proprietary information set forth above. *See*
 27 *Dunbar v. Google, Inc.*, 2013 WL 12216625, at *1 (N.D. Cal. Aug. 18, 2014) (granting sealing
 28 requests that were “narrowly tailored to protect . . . proprietary information”).

1 * * *

2 For these reasons, Facebook respectfully requests that the Court permanently seal the
3 materials attached to Plaintiffs' Administrative Motions as set forth herein and as fully set forth in
4 the Proposed Order.

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